IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1290 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SABERO ORGANICS GUJARAT LTD. & 1 - Petitioner(s)
Versus
UNION OF INDIA THR'MINISTRY OF FINANCE & 2 - Respondent(s)

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Appearance :

MR.S.N.SHELAT, SENIOR ADVOCATE FOR NANAVATI & NANAVATI for Petitioner(s) : 1 - 2.
MR JITENDRA MALKAN for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 08/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1 On 30/01/2006 when the matter came up for admission hearing, after hearing the learned Senior Advocate appearing on behalf of the petitioners notice for final disposal had been issued by this Court on the limited ground that no hearing was granted before making the impugned order dated 19/1/2006 by respondent No.3.

2 Mr.Malkan appears on behalf of respondent authorities and tenders affidavit-in-reply dated 6/2/2006.

3 It is an admitted position that no opportunity of hearing was granted before impugned order dated 19/1/2006 was made by the respondent authority. Even the affidavit-in-reply does not state that any opportunity of hearing was ever granted before the order was made. In these circumstances, Rule returnable today. Mr.Malkan waives service.

4 Respondent No.3 while passing the order on 19/01/2006, has ordered the forfeiture of Cenvat Credit facility being availed of by the petitioner company without granting any opportunity of hearing to the petitioner. This fact is not disputed and no provision of law is pointed out which permits such an exercise viz. making of an order without affording an opportunity of hearing. The impugned order, therefore, cannot be permitted to operate. Accordingly, impugned order No.01 of 2006 dated

19/01/2006 is hereby quashed and set aside. Needless to state that in the aforesaid factual matrix it is not necessary to direct the petitioner to avail of statutory remedy.

5 The respondent authority is directed to issue Show Cause Notice and accord proper and reasonable opportunity of hearing in case it intends to make any order. After hearing the petitioner it will be open to the respondent authority to pass an order in accordance with law. Rule made absolute. The petition is disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-
(D.A.MEHTA,J) (H.N.DEVANI,J)

m.m.bhatt